

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5867 OF 1983

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

BHAGWANBHAI BHAICHANDBHAI PATEL

VERSUS

THE CENTRE FOR ENTREPRENEURSHIP DEVELOPMENT & ORS.

Appearance:

MR KM PATEL for the Petitioner

MR DG SHUKLA for Respondent No.1

MR YJ PANDYA for Respondents No.2 & 3

Coram: S.K. Keshote,J

Date of decision: 21.1.97

C.A.V. JUDGMENT

Heard learned counsel for the parties.

2. The petitioner, an officer of the Centre for Entrepreneurship Development, Ahmedabad, respondent No.1 herein, filed this writ petition and grievance has been made that he has illegally been superseded in the matter of promotion.

3. The juniors who have been given promotion have been impleaded as parties to this petition in the year 1996, i.e. under the order of the Court dated 3.9.96 in Civil Application No.7400 of 1996 as initially these two persons were not impleaded as parties. Further the petitioner has not challenged the promotion of these two respondents made on the post of Deputy Manager way back on 15th October 1983 with effect from 1st July 1983. It is also not the case of the petitioner that the other post of Deputy Manager is lying vacant. So the claim of the petitioner for promotion to the post of Deputy Manager is accepted, then he can get that relief only when one of the promotees in the year 1983 is ousted. In absence of challenge to the promotion of those persons and the fact that the petitioner has not impleaded them as party in the year 1983, it is difficult to grant that relief in his favour. Those two persons have been impleaded as party in this Special Civil Application by filing Civil Application on 30th August 1996. The petitioner filed this Civil Application when those two respondents were promoted on the post of Manager in the month of March and September 1990. The petitioner has also been promoted on the post of Deputy Manager on 21st March 1990. So the petitioner got the promotion when the post of Deputy Manager fell vacant due to promotion of one of the respondents, i.e. the respondent No.3 on the post of Manager. So the relief which the petitioner is seeking in this application for his promotion from the year 1983 can only be granted in case his senior person is found to be illegally promoted and when he is ousted. The petitioner has not impleaded those two persons as parties initially and their promotion has also not been challenged. In absence of challenge to the promotion of respondents No.2 and 3, though it is accepted for the time being that supersession of the petitioner was illegal, the relief prayed for cannot be granted. Now after 13 years of filing of this Special Civil Application, those two persons have been joined, but still the petitioner has not challenged their promotion on the post of Deputy Manager or Manager. Otherwise also, there is a delay in bringing these two persons on record and after 13 years of their promotion the said promotion cannot be quashed and set aside. Delay and laches in challenging the promotion is also an important consideration. The petitioner, by not challenging their

promotion at the time of filing the petition, has allowed those persons to acquire their right of seniority as well as further promotion. The petitioner has therefore acquiesced in the promotions of the respondents No.2 and 3. In the matter where the posts are limited and all such posts are filled in, the claim of the petitioner for promotion on the ground that he has illegally been superseded, in absence of challenge to the promotions of the alleged juniors, cannot be accepted. For the reasons that the petitioner has chosen not to implead those persons as party within reasonable time as well as not to challenge their promotions, this Court will not grant relief to the petitioner, even if his claim is accepted on merits, by giving directions to the respondent to create supernumerary post. The petitioner should have been vigilant for his rights and in case he considers his supersession to be illegal and consequent promotion of the juniors bad, he should have impleaded them as party initially and the promotions should have been challenged. That precisely has not been done in the present case. So this writ petition deserves to be dismissed only on the ground of delay and laches. Yet there is another reason on which this writ petition also deserves to be dismissed. The petitioner has a right of consideration for promotion and not a right for promotion. From the record produced by the respondent No.1, it is clearly borne out that the case of the petitioner for promotion to the post of Deputy Manager, Accounts and Deputy Manager, Administration, has been considered but he was not found to be meritorious on the assessment of comparative merits. The Selection Committee has considered the case of the eligible persons including the petitioner, but he could not stand to merits and as such, those two persons were given promotion. The petitioner has based his claim only on the ground that he is senior to those respondents. The seniority plays two important roles. One to bring a person in a zone of consideration for promotion and secondly if there is a marking system for making selection, then the seniority should be given due weightages. The respondent's counsel has given out that numbers are given for seniority also for making assessment of merits of candidates for promotion and even if what the petitioner claims his seniority is accepted, then he will get two more numbers than those awarded, for seniority. The learned counsel for the respondent has produced on record the chart of the marks awarded to the petitioner and the other two persons. It is a list of preference and marks according to criteria mentioned in the policy, finalised of those employees who have completed three years service and are entitled for promotion in the cadre as per the unanimous decision

taken in the meeting of senior project leaders. Mr. Kiritbhai B. Shah was given 51 numbers, Mr. Harendra A. Shah was given 55 numbers. The petitioner secured only 45 marks and he was recommended for two additional increments. The fact that marking has been done shows that selection has been done fairly and impartially and it is a different matter that the petitioner could not stand to the merits. The petitioner was found suitable for only two additional increments. In the matter where the promotion has to be made on the basis of criteria of merits a junior can supersede on the basis of comparative assessment of service record which exactly happened in the present case. None of the legal and fundamental rights of the petitioner has been infringed and the relief prayed for by the petitioner in this petition cannot be granted. The petitioner has no case on merits, the preliminary objection raised by the learned counsel for the respondent that the Centre is not a State or instrumentality of the State within the meaning of Article 12 of the Constitution of India, need not be gone into.

4. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

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